

Jeffrey A. Johnson, OSB No. 82292
Internet e-mail:jjohnson@cvk-law.com
COSGRAVE VERGEER KESTER LLP
805 SW Broadway, 8th Floor
Portland, Oregon 97205
Telephone: (503) 323-9000
Facsimile: (503) 323-9019
Of Attorneys for Defendant

RECEIVED
JUL 11 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CECILIA L. BARNES,

Plaintiff,

v.

YAHOO!, INC.

Defendant.

Case No.

CV 05 - 926 AA

**NOTICE OF REMOVAL OF
ACTION UNDER 28 U.S.C.
1441 (DIVERSITY) AND
DEMAND FOR JURY TRIAL**

TO: Clerk of the Above-Entitled Court:

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant, Yahoo!, Inc., files this Notice of Removal of the above-captioned action from the Circuit Court of the State of Oregon for the County of Multnomah to the United States District Court for the District of Oregon, Portland Division. The grounds for removal are as follows:

1. This civil action was commenced on or about May 24, 2005, in the Circuit Court of the State of Oregon for the County of Multnomah, and docketed at No. 0505-05520 in that court.

Page 1 – NOTICE OF REMOVAL

COSGRAVE VERGEER KESTER LLP
Attorneys
805 SW Broadway, 8th Floor
Portland, OR 97205
(503) 323-9000

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2. Plaintiff asserts that Defendant was served with the Complaint on June 2, 2005. A true and correct copy of the Complaint is attached hereto as Exhibit 1.

3. At all times relevant to this action, the Defendant has been and continues to be a citizen of states other than Oregon, and has not been and is not a citizen of Oregon. Specifically, Defendant is incorporated in the State of Delaware, with its principal place of business in California.

4. According to the Complaint, Plaintiff is a resident of Multnomah County, Oregon. See Complaint ¶ 1.

5. The amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000. Paragraph 11 of Plaintiff's Complaint seeks "economic and non-economic damages against Defendant in an amount to be determined at trial, but in no event less than \$3,000,000." See Complaint ¶ 11. Plaintiff also asserts that she intends to amend her Complaint "to allow for punitive damages." *Id.* ¶ 13.

6. Because this is an action between citizens of different states, in which the amount in controversy, exclusive of interest and costs, exceeds \$75,000, this Court would have original jurisdiction under 28 U.S.C. § 1332(a).

7. This action may properly be removed to the United States District Court, Portland Division, pursuant to 28 U.S.C. § 1441 *et seq.*, because this Court has original jurisdiction over this action, and this notice is being filed within 30 days of service of the Complaint on the Defendant. See 28 U.S.C. §§ 1441(a), 1446(b).

8. Venue lies in the United States District Court for the district of Oregon, Portland Division, because this District and Division embrace the place (Multnomah County) where the state court action is pending. See 28 U.S.C. § 1441(a).

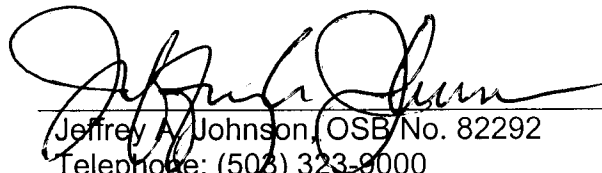
9. Pursuant to 28 U.S.C. § 1446(d), Defendant is concurrently serving this Notice upon the Plaintiff, and filing a copy of the Notice with the Clerk of the Circuit Court of the State of Oregon for the County of Multnomah.

10. Defendant hereby specifically preserves and incorporates all affirmative defenses enumerated in Fed. R. Civ. P. 12(b)(1)-(6) and 12(h).

WEHREFORE notice is given that this action is removed from the Circuit Court of the State of Oregon for the County of Multnomah to the United States District Court for the District of Oregon, Portland Division.

DATED: June 23, 2005

COSGRAVE VERGEER KESTER LLP

A handwritten signature in black ink, appearing to read "Jeffrey A. Johnson", is written over a horizontal line.

Jeffrey A. Johnson, OSB No. 82292

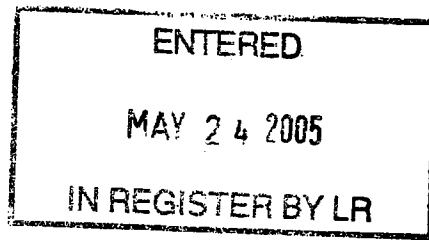
Telephone: (503) 323-9000

Fax: (503) 323-9019

E-mail: jjohnson@cvk-law.com

Of Attorneys for Defendant

Trial Attorney: Same



FILED
2005 MAY 24 PM 4:02
CIRCUIT COURT
FOR MULTNOMAH COUNTY

TRUE COPY

6 IN THE CIRCUIT COURT OF THE STATE OF OREGON
7 FOR THE COUNTY OF MULTNOMAH

8 CECILIA L. BARNES,
9 Plaintiff,

10 v.

11 YAHOO!, INC., a Delaware corporation,
12 Defendant.

Case No. **05520**
0505-05520
COMPLAINT

13
14 Plaintiff alleges as follows:

15 1.

16 Plaintiff Cecilia L. Barnes is a female resident of Multnomah County in the State of
17 Oregon.

18 2.

19 Defendant Yahoo!, Inc. is a corporation organized and existing under the laws of the
20 State of Delaware, with its principal place of business in a state other than Oregon. Defendant
21 Yahoo!, Inc. does business within the State of Oregon.

22 3.

23 In December 2004, Plaintiff's ex-boyfriend began posting unauthorized profiles of
24 Plaintiff on Yahoo!. These profiles consisted of nude pictures of Plaintiff that were taken
25 without her knowledge or authorization and Plaintiff's work contact information. Plaintiff
26 learned of these postings when unknown men began contacting her at work through her work

1 email and telephone. Additionally, Plaintiff's ex-boyfriend would engage in online discussions
2 in Defendant's chat rooms posing as Plaintiff and then direct the men he corresponded with to
3 the profiles. Due to these profiles and the online chats, unknown men would arrive without
4 warning at Plaintiff's work expecting to engage in sexual relations with her.

5 4.

6 Per the instructions listed on the Yahoo! Profiles website, on or about January 2005,
7 Plaintiff mailed Defendant Yahoo! a signed statement denying any involvement with the
8 unauthorized profiles and a copy of Plaintiff's photo ID. Plaintiff requested that Yahoo! remove
9 these profiles. Defendant did not respond to the Plaintiff.

10 5.

11 In February 2005, Plaintiff was still receiving unsolicited emails, calls and visits.
12 Plaintiff again mailed Yahoo! a statement requesting that it remove the unauthorized profiles.
13 Defendant again did not respond to the Plaintiff.

14 6.

15 Plaintiff mailed Yahoo! a statement requesting that it remove the unauthorized profiles
16 two more times in March 2005. Defendant still did not respond to the Plaintiff.

17 7.

18 On March 29, 2005, Mary Osako, Yahoo!'s Director of Communication, telephoned
19 Plaintiff regarding the unauthorized profiles. This phone call was precipitated by a report that
20 was to air on a local Portland, Oregon news program on March 30, 2005 and March 31, 2005.
21 Ms. Osako, acting in the course and scope of her employment, asked Plaintiff to fax to her
22 personally the previous statements that Plaintiff had mailed to Yahoo!. Ms. Osako told Plaintiff
23 that she would personally walk the statements over to the division responsible for stopping
24 unauthorized profiles and they would take care of it. Ms. Osako assured Plaintiff that Yahoo!
25 would put a stop to the unauthorized profiles. By undertaking to assist plaintiff, Defendant
26 assumed an affirmative duty to do so with care.

1 8.

2 Because Plaintiff expected and relied on Defendant to provide assistance to Plaintiff,
3 Plaintiff made no other arrangements for assistance.

4 9.

5 Although Defendant may have had no initial responsibility to act, once Defendant,
6 through its agent, undertook to act, Defendant must do so reasonably. Defendant voluntarily
7 undertook to remove the aforementioned profiles from its website. The removal of the profiles
8 would have protected Plaintiff from the subsequent injuries she suffered. Defendant knew or
9 reasonably should have known that the removal of the profiles were necessary for the protection
10 of Plaintiff. Defendant, in breach of the duty described above, negligently and carelessly failed
11 to remove the unauthorized profiles and prohibit them from being posted again.

12 10.

13 As a direct and proximate result of Defendant's negligence, while Plaintiff was waiting
14 for Defendant to provide assistance to Plaintiff, Plaintiff was sexually harassed by strange men
15 over her work email, work telephone and in person at work. Additionally, nude pictures of
16 Plaintiff were available to be viewed by over 165 million registered Yahoo! users and
17 345 million unique visitors to Yahoo! each month.

18 11.

19 As a further direct and proximate result of Defendant's negligence and carelessness,
20 Plaintiff has suffered physical injury, substantial emotional distress, mental anguish, injury to her
21 personal and professional reputation, loss of self-esteem and dignity. Plaintiff should be
22 awarded economic damages and non-economic damages against Defendant in an amount to be
23 determined at trial, but in no event less than \$3,000,000.

24 12.

25 As a direct and proximate result of Defendant's actions, Plaintiff has incurred expenses in
26 bringing this action and should be awarded such costs to the full extent permitted under the law.

13.

Plaintiff intends to amend this complaint pursuant to ORS 31.725 to allow for punitive damages.

WHEREFORE, the Court should grant judgment in favor of Plaintiff Barnes and against Defendant Yahoo! and grant the following relief:

1. On Plaintiff's Claim for Relief, damages in an amount to be determined at trial but in no event less than \$3,000,000, plus costs and disbursements; and

2. Such further or alternative relief in favor of Plaintiff as the Court deems appropriate.

DATED this 24 day of May, 2005.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

By 

Thomas R. Rask III, OSB No. 93403
Of Attorneys for Plaintiff Cecilia L. Barnes

Trial Attorney: Thomas R. Rask, III

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing NOTICE OF REMOVAL on the date indicated below by

- ☐ mail with postage prepaid, deposited in the US mail at Portland, Oregon,
- ☒ hand delivery,
- ☐ facsimile transmission,
- ☐ overnight delivery,

I further certify that said copy was placed in a sealed envelope delivered as indicated above and addressed to said attorney at the address listed below:

Thomas R. Rask, III
Kell Alterman & Runstein LLP
520 SW Yamhill Street, Suite 600
Portland, OR 97204

Of Attorneys for Plaintiff

DATED: June 23, 2005


Jeffrey A. Johnson